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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,839	04/19/2004	Alex K. Gendall	12,606	2092
7590	11/10/2005		EXAMINER	
William W. Haefliger 201 So. Lake Ave., #512 Pasadena, CA 91101				HANEY, RICHALE LEE
		ART UNIT		PAPER NUMBER
		3765		

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/826,839	GENDALL, ALEX K.
	Examiner Richale L. Haney	Art Unit 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 April 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-12 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 19 April 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 4/19/2005

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 40, A₁, and A₂. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 requires the connection component being located below the lowermost rear edge. Claim 12 requires that the helmet be located above and proximate the connection elements, making claim 12 redundant.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Quinn (US 1,327,062). The device of Quinn shows a two ply bandana device of a generally triangular shape (Figure 1, 1) having two upper corners on with opposite sides (Figure 1, 2 and 5) each corner defining and each upper corner defining an upper horizontal edge and side edge (Figure 1) extending downward to meet at an apex. The device comprises press together attachment components at each opposite corner (Figure 1, 7 and 2) proximate the edges of the device. Quinn shows a corner portion, comprised of four layers, achieved by folding the triangular upper corner back to form a corner, which supports an attachment component (Figure 2). The device of Quinn does not show the device used as claimed by the applicant; however the structure that has been set forth would allow the device to be worn on the face of a rider wearing a helmet so that the scarf is located below the lowermost rear edge of the helmet and the components being pressed together to retain the device over the wearers face protecting the rider from environmental elements.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quinn in view of Fleitman (US 5,377,360). The device of Quinn substantially describes the claimed invention but can be seen to be lacking components comprised of hook and loop tape, wherein area A_1 is greater than A_2 , and a resiliently yieldable attachment component. The device of Fleitman shows an article of apparel with a base portion comprising hook elements and a base portion comprising loop elements forming an attachment component (Figure 1, 22a and 22b), wherein the face of 22b is greater than the face of 22a (Figure 2) so that the device can be adjusted by shifting the position of 22b to 22a and also provides a resiliently yieldable means, comprising elasticity found in the fabric so that when the attachment component is secured to the fabric the components may shift position resiliently relative to the bandana corners (Column 3, lines 32 –38). The device of Quinn does not show two opposite corners being formed from folding back a triangular portion of the main fabric; however, the mere duplication of parts has no patentable significance. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the attachment components shown by Quinn, by utilizing hook and loop tape with unequal face portions and a resiliently yieldable

attachment as taught by Fleitman, in order to obtain and adjustable length (Column 3, lines 11 - 12) and provide a snug, yet comfortable fit (Column 3, lines 35 – 36).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Herzberg (US 3,105,970), Wood et al. (US 6,032,292), Magdziak-Hautala (US D458,004), Bell et al. (US 2004/0078869) show various triangular devices with attachment components.

Ryvin (US 5,575,009) shows a face-covering device wherein the attachment component is resiliently yieldable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney
Patent Examiner
Art Unit 3765
November 2, 2005

RLH



JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700